

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 17-cr-20298-1  
Hon. Matthew F. Leitman

D1, JAMES ELBERT,

Defendant.

/

---

**ORDER DECLINING TO DEEM NOTICE OF APPEAL FILED**  
**NUNC PRO TUNC AS OF FEBRUARY 19, 2018**

On February 15, 2018, this Court sentenced Defendant James M. Elbert III to 260 months in federal prison in connection with guilty pleas that Elbert had entered under a Rule 11 Plea Agreement. The Plea Agreement contained an appeal waiver that provided that Elbert waived his right to appeal his sentence if the Court imposed a sentence of less than 300 months – which the Court did. (*See* Plea Agreement, ECF No. 44, PageID.173.) Following sentencing, the Court did not receive a Notice of Appeal from Elbert. Instead, on March 15, 2019, Elbert filed a motion to vacate his sentence pursuant to 28 U.S.C. §2255. (*See* Mot., ECF N0. 74.) In that motion, Elbert swore under penalty of perjury that he did **not** appeal from the judgment entered by the Court. (*See id.*, PageID.393 & 404.)

Elbert now claims that he did try to appeal from the judgment entered by the Court. He says that on February 19, 2018, he completed a Notice of Appeal and placed it into the mail in the county jail in which he was being held. (*See* Letter, ECF No. 133.) He asks the Court to treat the purported Notice of Appeal as being filed nunc pro tunc as of February 19, 2018, and to permit him to appeal his sentence. (*See id.*)

Elbert's request is **DENIED**. The Court does not believe Elbert's contention that he tried to file a Notice of Appeal. First, as noted above, he previously swore that he did **not** file an appeal. Second, he offers no explanation as to why he waited five years to inquire about the status of appeal. If he had attempted to file an appeal, as he now claims, he surely would have inquired about the status of his appeal much closer to the time he says that he filed it. Indeed, Elbert submitted many filings to the Court following his sentencing, and none of them mentioned any attempt to appeal. Finally, the Court is confident that Elbert understood that he had waived his right to appeal his sentence and that, in light of that understanding, he did not attempt to appeal. The Court will not permit him to attempt to appeal now.

**IT IS SO ORDERED.**

s/Matthew F. Leitman  
MATTHEW F. LEITMAN  
UNITED STATES DISTRICT JUDGE

Dated: September 16, 2024

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 16, 2024, by electronic means and/or ordinary mail.

s/Holly A. Ryan

Case Manager

(313) 234-5126